HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

Writ Appeal No.199 of 2007

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Between:

Sri Rama Metal Industries,
represented by its Proprietor,
K. Anjaneyulu, Gopanaplli Village,
Serilingampalli Mandal, Ranga Reddy District. … Appellant.

And

The Mandal Revenue Officer,
Serilingampalli Mandal and others. …. Respondents.

:: J U D G M E N T ::

Counsel for the appellant : Sri V.Venkataramana

Counsel for respondent Nos.1, 2 and 4 : Government Pleader for Revenue

Counsel for respondent No.3 : Sri V.R.N. Prashanth

9th March, 2007

Per G.S. SINGHVI, C.J.

This is an appeal for setting aside order dated 15-2-2007 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant to restrain the respondents from interfering with its possession and enjoyment of land measuring Ac.5.00 comprised in Survey No.37/2 of Gopanapalli Village, Serilingampalli Mandal, Ranga Reddy District without following the procedure established by law.

In the affidavit filed by him, Sri K. Anjaneyulu, proprietor of the appellant company averred that the land in question was purchased by the company vide registered sale deed dated 4-9-1985 from the successors and legal representatives of the original owner and pattadar Smt. P. Rathnamdas, who had been granted Loani Patta under Rule 9(g) of the Loani Rules, 1950 framed under Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F. Sri Anjaneyulu further averred that he had constructed a compound wall to protect the land from encroachment and installed a hot mix plant, dug a bore well and constructed some rooms and that he had been cultivating a part of the land. In paragraph 3 of the affidavit, Sri Anjaneyulu alleged that on 12-2-2007, the officers of University of Hyderabad (respondent No.3 herein) came to the site with the intent to take possession of the land by stating that the same had been allotted to the university by the State Government. He pleaded that the government could not have deprived the petitioner (the appellant herein) of the land without sanction of law and without complying with the rules of natural justice.

The learned Single Judge did not call upon the respondents to file counter affidavit, but dismissed the writ petition simply by relying on the oral statement made by the learned Assistant Government Pleader for Revenue and the Standing Counsel for the University that the land

in question is government land and the same was handed over to the university on 3-2-2004. The learned Single Judge opined that the dispute regarding possession cannot be adjudicated in the writ petition and the petitioner can avail appropriate legal remedy against the university.

Sri V. Venkataramana invited our attention to the averments contained in the affidavit of Sri K. Anjaneyulu and documents annexed therewith including copies of the sale deeds and Certificate of Loani dated 27-4-1961 issued by Tahsildar, Hyderabad (West) in favour of Smt. P. Rathnamdas to show that the appellant had purchased the land in question from its lawful owner and argued that the learned Single Judge committed a grave error by summarily dismissing the writ petition ignoring the uncontroverted averments contained in the affidavit of Sri K. Anjaneyulu. He further argued that the oral statements made by the Government Pleader and the counsel representing respondent No.3 could not be made basis for holding that there was dispute regarding possession of the land and questions of fact cannot be decided under Article 226 of the Constitution.

Learned Government Pleader for Revenue and Sri V. R. N. Prashanth, learned counsel for the university argued that the land in question is government land and the appellant does not have any right over it. They conceded that the respondents were not called upon to file counter affidavit, but argued that the learned Single Judge rightly declined to entertain the writ petition because disputed questions of fact cannot be decided by the High Court under Article 226 of the Constitution.

We have given serious thought to the entire matter. In our opinion, the order under challenge is liable to be set aside because the view expressed by the learned Single Judge on the maintainability

of the writ petition is based on an unfounded assumption that there is a dispute regarding possession of the land. Although it may appear repetitive, we consider it apposite to mention that the averment contained in the affidavit of Sri K. Anjaneyulu that the petitioner had purchased the land in question from the successors and legal representatives of the pattadar Smt. P. Rathnamdas had not been controverted by the respondents by filing affidavit. Not only this, they did not dispute that after taking possession of the land, the proprietor of the appellant installed a hot mix plant, dug a bore well and had been cultivating the land. Therefore, the observation of the learned Single Judge that there is a dispute regarding possession cannot but be termed as unfounded. It needs no emphasis that in exercise of power under Article 226 of the Constitution, the High Court can decide questions of fact and some times even disputed questions of fact - **State of Orissa v. Dr. (Ms.) Binapani Dei**[1] and **Century Spinning and Manufacturing Co. Ltd. v. Ulhas Nagar Municipal Council**[2]. In the latter decision, the Supreme Court, while reversing the judgment of the Bombay High Court, which had dismissed the writ petition filed by the appellant against the levy of octroi, held:

> "The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits. Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be

> characterised as frivolous, vexatious or unjust. The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we arc satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried.
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> Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary."

We are further of the view that the documents produced by the appellant, the authenticity of which has not been questioned by the respondents, are sufficient for recording a finding that the appellant is in lawful possession of the land. It is neither the pleaded case of the respondents nor the learned counsel appearing on their behalf argued that the appellant is being deprived of the land after giving it action-oriented notice and opportunity of hearing. Therefore, it is reasonable to take the view that the threatened dispossession of the appellant is vitiated due to violation of Article 300-A of the Constitution and the rules of natural justice.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. The writ petition is admitted for hearing. The same may be listed for hearing before an appropriate bench on 16th April, 2007.

With a view to protect the rights of both the parties, we direct that for a period of four weeks, the parties shall maintain status quo regarding the disputed property. Within this period, the respondents may file their counter affidavit and also make a prayer for discontinuing the interim order.

As a sequel to disposal of the appeal in the manner indicated

above, WAMP.No.363 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

G.S.SINGHVI, C.J.

9th March, 2007.

G.V.SEETHAPATHY, J.

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[1] AIR 1967 SC 1269

[2] AIR 1971 SC 1021